

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3342 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MALI MAFATLAL KHUSHALDAS

Versus

V B BAKSHI

Appearance:

MR GM AMIN for Petitioner

MR SK JHAVERI for added Respondent

MR HL JANI for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner, by this petition, is challenging the orders, annexures 'A', 'B', & 'C', passed by the Gujarat Revenue Tribunal at Ahmedabad dated 21st June 1983, made in Revision Application No.TEN B.A.914/81, order of the Deputy Collector, Land Reforms, Palanpur,

dated 4th September 1981 passed in Tenancy Appeal No.1981/25/81 and the order of the Mamlatdar & ALT, Palanpur dated 20th February 1982 in case No.1/80 in the proceedings under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act.

3. The facts of the case, briefly stated, are that the petitioner filed an application on 2nd April 1980 being case No.1/80 before the Mamlatdar and Agricultural Land Tribunal under Section 70(b) of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as the 'Act 1948') for declaration that he is the tenant of the land comprising Survey No.1225/1, 1225/2 and 1225/3 and 127/1 admeasuring 3 Acres - 3 Gunthas and 2 Acres 15 Gunthas. The aforesaid lands are situated at Palanpur. It is the case of the petitioner that he is cultivating the land since 1951 and in the year 1956-57 in the revenue record in the column 'Khedut', petitioner was shown as tenant and till date the petitioner is in possession of the said land and carrying on agricultural operations. It has further been stated that in the year 1957 incorrect entry has been made in the revenue record showing him as a servant. The petitioner is not disputing that this land was belonging to a Trust named "George Vth Club". This application was contested by the respondents and their case was that the land is not an agricultural land and secondly as the said land fall in the territorial boundary of the municipality, the provisions of the Act 1947 are not applicable to it. Further defence has been taken that this land has been given under a 'Sanad' to a Trust by 'Hujur's' order dated 21st May 1949 for non agricultural purposes. There were covenants in the Hujur's order that the Trust will have no right to lease out the property and as such, the claim of the petitioner of tenancy was not tenable. The 'Navab' of Palanpur has created the Trust in respect of entire land and the club has to be run for recreation and social activities for the members of the club. The creation of lease has been specifically prohibited and as such there is no question of creating any tenancy right. The learned Mamlatdar, in this respect, framed the issue "whether or not the tenancy act is applicable to the suit land?" This issue has been decided in favour of the respondent and it has been held that the Act, 1947 is not applicable to the land in dispute. The Appellate Authority rejected the appeal filed by the petitioner. The matter was thereafter taken up by him to the Revenue Tribunal which too in its turn, dismissed the Revision Application. Hence this Special Civil Application.

4. The learned counsel for the petitioner contended

that the Act, 1948 is applicable to the present case as the possession has to be seen as on the "Tillers' Day", i.e. on 1st July 1957, on which date the petitioner was in possession of the land as a tenant. Rejection of the application of the petitioner by Mamlatdar is illegal. It has next been contended that the Tribunal has not gone on the substantial question of law whether the Act, 1948 is applicable to the present case or not, but it has proceeded on the ground that the land is given to the Trust for non agricultural purposes and even if on the part of it, the agricultural operations were carried out by the petitioner, the main purpose has to be taken into consideration which was of the club, a non agricultural purpose and as such, the Act, 1948 is not applicable. The learned counsel for the petitioner contended that that was not the issue to be gone into. It has next been contended that the Tribunal has erred in holding that even if it is taken to be a case of tenancy right, then under the Hujur's order there was a special covenant prohibiting the Trustees from leasing out the land and as such no right has accrued in favour of the petitioner. The learned counsel for the petitioner further submitted that this point was not in issue and none of the lower Courts have gone on the question whether the rights claimed by the petitioner in the land were prohibited by the covenants aforesaid and its implications. Lastly, the learned counsel for the petitioner contended that the issue which has been framed and decided by the Mamlatdar was not a pure question of law but it was a mixed question of law and facts. That question could have been decided only after taking evidence and not on the basis of arguments made by the learned counsel for the parties.

5. Shri S.K. Jhaveri, learned counsel for the respondents, on the other hand, supported the orders made by the Courts below. However, when this Court has asked Shri Jhaveri that the matter deserves to be remanded for consideration of larger issues which were there in the case and which were not considered by the Tribunal, he fairly conceded that the matter may be remanded to the Mamlatdar's Court with liberty to the parties to raise all the points available to them, both legal and factual and affording opportunity to produce both oral and documentary evidence.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

7. The matter has been decided by the Mamlatdar only on a preliminary issue. The petitioner has raised a point before the Gujarat Revenue Tribunal that the said

issue was not a pure question of law, but it was a mixed question of law and fact and it should have been decided after giving opportunity of producing evidence to both the parties, but the Tribunal has decided this important question having a technical approach. It is true that the petitioner or the respondent had not made request to the Mamlatdar to produce any oral evidence, and the counsel who was appearing before the Mamlatdar may have taken it to be pure question of law, but on this question any concession, direct or implied or by necessary implication or inference is not binding on the parties. The learned counsel for the petitioner is correct to contend that it is not a pure question of law, but an issue of mixed question of law and fact. The Tribunal has gone on many questions of fact other than the issue which has been decided by the Mamlatdar. The Mamlatdar has only concentrated on the question whether the Act, 1948 is applicable or not whereas the Tribunal has gone further on the question and held that the right claimed by the petitioner is illegal and further that the land was mainly used for non agricultural purpose and as such it is not agricultural land and the Act, 1948 may be applicable or may not be applicable. These are the questions which could have been decided after issues having been framed and evidence is taken of both the parties. After going through the issue which has been framed by the Mamlatdar as well as the judgments of the authorities below, I am satisfied that it was not a pure issue of law, but it is a issue of mixed question of law and facts. Under some misconception, if right of producing evidence has not been exercised or prayed for, the litigant cannot be permitted to be subjected to prejudice. It is a matter where the petitioner is claiming tenancy right. The Act, 1948 has been enacted with the object and purpose to see that the real cultivator of the agricultural land acquires the tenancy right. It is a beneficial Act and it has to be given effect to the extent where real person who is entitled for tenancy right may not be deprived of the same. However, the question whether this Act is applicable or not to the land in question still has to be gone into. In fact, the Mamlatdar should have, instead of deciding the matter as a preliminary issue, by framing necessary issues, decided all the issues together. However, much need not be gone into and said in this case for the reason that the matter has to be remanded to the Mamlatdar as remand of the matter has also not seriously been contested by the learned counsel for the respondent, Shri S.K. Jhaveri.

8. In the result, this Special Civil Application

succeeds and the same is allowed. The orders, annexures 'A', 'B', & 'C', passed by the Gujarat Revenue Tribunal at Ahmedabad dated 21st June 1983, made in Revision Application No.TEN B.A.914/81, order of the Deputy Collector, Land Reforms, Palanpur, dated 4th September 1981 passed in Tenancy Appeal No.1981/25/81 and the order of the Mamlatdar & ALT, Palanpur dated 20th February 1982 in case No.1/80 in the proceedings under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, respectively are quashed and set aside and the matter is remanded back to the Mamlatdar & ALT, Palanpur, with directions to decide the application of the petitioner filed under Section 70(b) of the Act, 1948 after framing all the issues which merge from the pleadings of the parties and after giving full opportunities of producing evidence, documentary and oral, to both the parties. Both the parties shall be at liberty to raise all questions of law and facts and for that purpose, both parties shall be at liberty to file amended pleadings. As it is an old matter, it is expected of the Mamlatdar & ALT, Palanpur, to decide the same within a period of one year from the date of receipt of certified copy of this order. However, it is also expected from the parties to give full cooperation to the authorities to decide the matter within the time bound programme. Rule made absolute in aforesaid terms with no order as to costs.

.....

(sunil)